

91ST CONGRESS
1ST SESSION

S. 1940

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1969

Mr. MUSKIE (for himself, Mr. MONDALE, Mr. PACKWOOD, and Mr. WILLIAMS of New Jersey) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To provide for continuation of authority for the expansion and regulation of exports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Export Expansion and
4 Regulation Act of 1969".

FINDINGS

6 SEC. 2. The Congress finds that—

7 (1) the availability of certain materials at home
8 and abroad varies so that the quantity and makeup of
9 United States exports and their distribution among im-
10 porting countries may affect the welfare of the domestic

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1 economy and may have an important bearing upon
2 fulfillment of the foreign policy of the United States;

3 (2) the unrestricted export of materials without
4 regard to whether they have significant military applica-
5 bility may adversely affect the national security of the
6 United States;

7 (3) the unwarranted restriction of exports from the
8 United States has a serious adverse effect on the stability
9 of our currency abroad and, therefore, upon the domestic
10 economy; and

11 (4) the uncertainty of government policy toward
12 certain categories of exports has curtailed the efforts of
13 American business in those categories to the detriment
14 of the overall attempt to improve the trade balance of
15 the United States.

16 DECLARATION OF POLICY

17 SEC. 3. The Congress makes the following declarations:

18 (1) It is the policy of the United States both (A) to
19 encourage trade in peaceful goods and technology with all
20 countries with which we have diplomatic or trading relations,
21 except those countries with which such trade has been deter-
22 mined by the President to be against the national interest,
23 and (B) to restrict the export of goods and technology
24 which have a significant military applicability in order to
25 protect the national security.

1 (2) It is the policy of the United States to use export
2 controls (A) only to the extent absolutely necessary to
3 protect the domestic economy from the excessive drain of
4 scarce materials and to reduce serious inflationary impact
5 of abnormal foreign demand, (B) only to the extent neces-
6 sary to further significantly the foreign policy of the United
7 States and to fulfill its international responsibilities, and
8 (C) to the extent necessary to exercise the necessary vigi-
9 lance over exports from the standpoint of their significance
10 to the national security of the United States.

11 (3) It is the policy of the United States that any export
12 controls found necessary should be applied uniformly to all
13 nations with which the United States engages in trade, except
14 where the furtherance of the foreign policy, or a recognition
15 of the international responsibilities, of the United States re-
16 quires that an exception be made in the case of one or more
17 nations.

18 (4) It is the policy of the United States (A) to formu-
19 late, reformulate, and apply any necessary controls to the
20 maximum extent possible in cooperation with all nations
21 with which the United States has defense treaty commit-
22 ments, and (B) to formulate a unified commercial and trad-
23 ing policy to be observed by all such nations.

24 (5) It is the policy of the United States to use its eco-
25 nomic resources and trade potential to further the sound

1 growth and stability of its economy as well as to further
2 its national security and foreign policy objectives.

3 (6) It is the policy of the United States (A) to op-
4 pose restrictive trade practices or boycotts fostered or im-
5 posed by foreign countries against other countries friendly
6 to the United States, and (B) to encourage and request
7 domestic concerns engaged in the export of articles, mate-
8 rials, supplies, or information, to refuse to take any action,
9 including the furnishing of information or the signing of
10 agreements, which has the effect of furthering or supporting
11 the restrictive trade practices or boycotts fostered or imposed
12 by any foreign country against another country friendly to
13 the United States.

14 AUTHORITY

15 SEC. 4. (a) To effectuate the policy set forth in sec-
16 tion 3 (1) hereof, there shall be established in the Depart-
17 ment of Commerce a Division of Trade Expansion the
18 function of which shall be to promote trade in peaceful
19 goods with all nations with which the United States is
20 engaged in trade, with special emphasis on promoting such
21 trade with (1) those countries or groups of countries with
22 which other countries or groups of countries having defense
23 treaty commitments with the United States have a signifi-
24 cantly larger percentage or volume of trade than does the
25 United States, and (2) other countries eligible for trade

1 with the United States but not significantly engaged in
2 trade with the United States.

3 (b) To further effectuate the policies set forth in sec-
4 tion 3, the President may prescribe rules and regulations to
5 prohibit or curtail the exportation to all countries from the
6 United States, its territories, and possessions, of any articles,
7 materials, or supplies, including technical data or any other
8 information. To the extent necessary to further the purposes
9 of this Act, such rules and regulations may apply to the
10 financing, transporting, and other servicing of exports and
11 the participation therein by any person. Such rules and regu-
12 lations shall provide that express permission and authority
13 must be sought and obtained to export to any country arti-
14 cles, materials, or supplies, including technical data, or any
15 other information, from the United States, its territories and
16 possessions, to any nation if the President shall determine
17 that such exported item is capable of a significant military
18 application which would prove detrimental to the national
19 security and welfare of the United States. Such rules and
20 regulations shall implement the provisions of section 3 (6)
21 of this Act and shall require that all domestic concerns re-
22 ceiving requests for the furnishing of information or the
23 signing of agreements as specified in such section must re-
24 port this fact to the Secretary of Commerce for such action
25 as he may deem appropriate to carry out the purposes of

1 such section. Such rules and regulations shall be uniformly
2 applied to all countries trading with the United States. Such
3 countries shall not be divided into categories for the purpose
4 of application of such rules and regulations or any portion
5 thereof.

6 (c) The rules and regulations authorized by this section
7 shall provide that the export of a particular category of
8 items shall not be subjected to the requirement that express
9 permission and authority be sought and obtained because of
10 significant military applicability, unless there is substantial
11 evidence (1) that such items are likely to be used for mili-
12 tary purposes, and (2) that similar goods or technology
13 are not readily available to the importing country from other
14 sources. Such permission and authority shall not be denied
15 unless there is substantial evidence that the particular ex-
16 portation is likely to be used for military purposes, and that
17 similar items are not readily available to the importing
18 country from other sources.

19 (d) Nothing in this Act, or in the rules and regulations
20 authorized by it, shall in any way be construed to require
21 authority and permission to export items in any categories
22 other than those specified in this Act or under any circum-
23 stances other than those specified in this Act.

24 (e) The President may delegate the power, authority,
25 and discretion conferred upon him by this Act, to such de-

1 departments, agencies, or officials of the Government as he
2 may deem appropriate.

3 (f) The authority conferred by this section shall not
4 be exercised with respect to any agricultural commodity, in-
5 cluding fats and oils, during any period for which the supply
6 of such commodity is determined by the Secretary of Agricul-
7 ture to be in excess of the requirements of the domestic
8 economy, except to the extent required to effectuate the
9 policies set forth in clause (B) or (C) of paragraph (2) of
10 section 3 of this Act.

11 CONSULTATION AND STANDARDS

12 SEC. 5. In determining what action to take with regard
13 to regulating and expanding exports, any department,
14 agency, or official making these determinations shall seek
15 information and advice from the several executive depart-
16 ments and independent agencies concerned with aspects of
17 our domestic and foreign policies and operations having an
18 important bearing on exports.

19 VIOLATIONS

20 SEC. 6. (a) Except as provided in subsection (b) of
21 this section, in case of any violation of any provision of this
22 Act or any regulation, order, or license issued hereunder, the
23 violator or violators, upon conviction, shall be punished by a
24 fine of not more than \$10,000 or by imprisonment for not
25 more than one year, or by both such fine and imprisonment.

1 For a second or subsequent offense, the offender shall be
2 punished by a fine of not more than three times the value of
3 the exports involved, or \$20,000, whichever is greater, or
4 by imprisonment for not more than five years, or by both
5 such fine and imprisonment.

6 (b) Whoever willfully exports anything contrary to any
7 provision of this Act, or any regulation, order, or license
8 issued hereunder, with knowledge that such exports will be
9 used for the benefit of any unfriendly nation, shall be pun-
10 ished by a fine of not more than five times the value of the
11 exports involved, or \$20,000, whichever is greater, or by
12 imprisonment for not more than five years, or by both such
13 fine and imprisonment.

14 (c) The head of any department or agency exercising
15 any functions under this Act, or any officer or employee of
16 such department or agency specifically designated by the
17 head thereof, may impose a civil penalty not to exceed
18 \$1,000 for each violation of this Act, or any regulation,
19 order, or license issued under this Act, either in addition to
20 or in lieu of any other liability or penalty which may be
21 imposed.

22 (d) The payment of any penalty imposed pursuant to
23 subsection (c) may be made a condition, for a period not
24 exceeding one year after the imposition of such penalty,

1 to the continued right to export of the person upon whom
2 such penalty is imposed.

3 (c) Any amount paid in satisfaction of any penalty
4 imposed pursuant to subsection (c) shall be covered into
5 the Treasury as a miscellaneous receipt. The head of the
6 department or agency concerned may, in his discretion,
7 refund any such penalty, within two years after payment,
8 on the ground of a material error of fact or law in the
9 imposition. Notwithstanding section 1346 (a) of title 28
10 of the United States Code, no action for the refund of
11 any such penalty may be maintained in any court.

12 (f) In the event of the failure of any person to
13 pay a penalty imposed pursuant to subsection (c), a civil
14 action for the recovery thereof may, in the discretion of
15 the head of the department or agency concerned, be brought
16 in the name of the United States. In any such action, the
17 court shall determine de novo all issues necessary to the
18 establishment of liability. Except as provided in this sub-
19 section and in subsection (d), no such liability shall be
20 asserted, claimed, or recovered upon by the United States
21 in any way unless it has previously been reduced to
22 judgment.

23 (g) Nothing in subsection (c), (d), or (f) shall
24 limit—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulations, order, or license issued under this Act;

4 (2) the authority to compromise and settle admin-
5 istrative proceedings brought with respect to violations
6 of this Act, or any regulation, order, or license issued
7 under this Act; or

8 (3) the authority to compromise, remit, or mitigate
9 seizures and forfeitures pursuant to section 1 (b) of title
10 VI of the Act of June 15, 1917 (22 U.S.C. 401 (b)).

11 ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act, the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the

1 district court of the United States for any district in which
2 such person is found or resides or transacts business, upon
3 application, and after notice to any such person and hearing,
4 shall have jurisdiction to issue an order requiring such person
5 to appear and give testimony or to appear and produce books,
6 records, and other writings, or both, and any failure to
7 obey such order of the court may be punished by such court
8 as a contempt thereof.

9 (b) No person shall be excused from complying with
10 any requirements under this section because of his privilege
11 against self-incrimination, but the immunity provisions of the
12 Compulsory Testimony Act of February 11, 1893 (27 Stat.
13 443), shall apply with respect to any individual who specifi-
14 cally claims such privilege.

15 (c) No department, agency, or official exercising any
16 functions under this Act shall publish or disclose information
17 obtained hereunder which is deemed confidential or with
18 reference to which a request for confidential treatment is
19 made by the person furnishing such information, unless the
20 head of such department or agency determines that the with-
21 holding thereof is contrary to the national interest.

22 ADMINISTRATIVE PROCEDURE ACT

23 SEC. 8. The functions exercised under this Act shall be
24 subject to subchapter II of chapter 5 of title 5 of the United
25 States Code, except that notice and hearing shall not be re-

1 quired in connection with applications for authority and per-
2 mission to export items which require such authority and
3 permission, and decisions on such applications shall not be
4 subject to judicial review.

5 EXPORT EXPANSION COMMISSION

6 SEC. 9. (a) The President is authorized to establish
7 an Export Expansion Commission (hereinafter referred to
8 as the "Commission") to be composed of fifteen members
9 to be appointed by the President. The members of the
10 Commission shall elect a Chairman.

11 (b) The Commission shall conduct a study to deter-
12 mine practicable ways, in furtherance of the national interest,
13 by which exports from the United States can be expanded
14 without jeopardizing the national security. The Commission
15 may make interim reports to the President and the Con-
16 gress, and shall make a final report thereto with respect
17 to its findings and recommendations not later than one
18 year after the date of enactment of this Act.

19 (c) Each member of the Commission who is appointed
20 from private life may receive compensation at a rate of
21 \$100 for each day he is engaged upon work of the Com-
22 mission, and shall be reimbursed for travel expenses, in-
23 cluding per diem in lieu of subsistence as authorized by
24 law (5 U.S.C. 5703) for persons in the Government service
25 employed intermittently.

1 (d) The Commission may, without regard to the pro-
2 visions of title 5, United States Code, relating to appoint-
3 ments in the competitive service or to classification and
4 General Schedule pay rates, appoint and fix the compen-
5 sation of an Executive Director, and the Executive Director,
6 with the approval of the Commission, may employ and
7 fix the compensation of such additional personnel as may
8 be necessary to carry out the functions of the Commission.
9 No individual so appointed may receive compensation in
10 excess of the rate authorized for GS-18 under the General
11 Schedule.

12 (c) (1) The Commission may require directly from the
13 head of any Federal executive department or agency avail-
14 able information which the Commission deems useful in the
15 discharge of its duties. All such departments and agencies
16 shall cooperate with the Commission and furnish information
17 requested by the Commission to the extent permitted by
18 law.

19 (2) The head of any executive department or agency of
20 the Government may detail, on a reimbursable basis, any
21 of its personnel to assist the Commission in carrying on its
22 work.

23 (f) Thirty days after submission of its final report, the
24 Commission shall cease to exist.

25 (g) There are authorized to be appropriated such sums

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1 as may be necessary to carry out the provisions of this
2 section.

3 QUARTERLY REPORT

4 SEC. 10. The head of any department or agency or other
5 official exercising any functions under this Act shall make a
6 quarterly report, within forty-five days after each quarter, to
7 the President and to the Congress of his operations here-
8 under.

9 EFFECTS ON OTHER ACTS

10 SEC. 11. The Act of February 15, 1936 (49 Stat. 1140) .
11 relating to the licensing of exports of tinplate scrap, is
12 hereby superseded; but nothing contained in this Act shall be
13 construed to modify, repeal, supersede, or otherwise affect
14 the provisions of any other laws authorizing control over
15 exports of any commodity.

16 EFFECTIVE DATE

17 SEC. 12. This Act shall take effect on July 1, 1969.

18 TERMINATION DATE

19 SEC. 13. The authority granted by this Act shall termi-
20 nate on June 30, —, or upon any prior date which the
21 Congress by concurrent resolution or the President by procla-
22 mation may designate.

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A BILL

To provide for continuation of authority for
the expansion and regulation of exports, and
for other purposes.

By Mr. MUSKIE, Mr. MONDALE, Mr. PACKWOOD,
and Mr. WILLIAMS of New Jersey

APRIL 22, 1969

Read twice and referred to the Committee on
Banking and Currency

Approved For Release 2002/01/02 : CIA-RDP71B00364R000500050006-2

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Remarks:

Attached is a copy of S. 1940, "To provide for continuation of authority for the expansion and regulation of exports, and for other purposes." May we have your views on the effect of this bill on Agency activities.

FOLD HERE TO RETURN TO SENDER

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8 May 69